IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

Smt.Sudha Agarwal & anr. Vs. Sudhir Kukkad and anr.

S.B.CIVIL CONTEMPT PETITION NO. 664/2006 in S.B.CIVIL FIRST APPEAL NO. 262/1998 AGAINST THE ORDER DT. 21.5.2004 PASSED BY HON'BLE MR.JSUTICE A.C.GOYAL WHEREBY APPEAL OF THE CONTEMNOR AGAINST THE DECREE OF EVICTION DATED 13.5.98 PASSED BY TRIAL COURT WAS DISMISSED.

Date of Order ** February 2nd, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.K.Agarwal, for the petitioner.
Mr.J.P.Goyal, Mr.Amit Kuri and Mr.Manish Acharya for the respondents.

BY THE COURT:

1. This contempt petition arises out of first appeal filed by tenant which was disposed of on 21.5.2004 on the undertaking given by the tenant to hand-over the vacant possession of the suit premises in question to the landlord on or before 30.11.2006.

2. According to the petitioners Landlord, since the appellant tenant gave the undertaking before this court to hand-over the vacant possession of the suit premises on or before 30.11.2006 but did not do so, she has to

file this contempt petition in this court on 7.12.2006, on which notices were issued on 11.12.2006 by this court. Again on 4.1.2007, this court issued notices to the contemnor no.2 Mr.Sandeep Kukkad when it was brought to the notice of this court by the contemnor respondent no.1 Sudhir Kukkad that respondent no.2 was in possession of the suit premises, who was though his brother and partner and on account of certain dispute between the partners, he was not able to get the vacant possession of the shop in question and hand over the same to the Landlord by the stipulated date. This appeared to be a camouflage to this court and, therefore, on 11.1.2007, a bailable warrant was issued against the respondent-contemnor no.2 Sandeep Kukkad to be produced before this court on 18.1.2007. On 18.1.2007, both the respondent-contemnors were present in the court and they filed the reply.

3. In the meanwhile, the petitioner-Landlord got executed the decree through trial court and obtained the vacant possession of the shop in question on 9.1.2007.

4. Arguing the present contempt petition and pressing for conviction, imposition of fine or even punishment by way of imprisonment, Mr.R.K.Agarwal, learned counsel appearing for the petitioners urged that the respondents have flouted the solemn undertaking given before this court and getting the appeal decided in terms of that

undertaking way back on 21.5.2004, to which consent was given by the Landlord so that the peaceful vacant possession be handed over to her on or before the stipulated date i.e. 30.11.2006, thereafter avoidance on the part of contemnors to give vacant peaceful possession of the shop in question to the Landlord was absolutely a wilful and gross contempt on their part and, therefore, this court may take strong view of the matter and punish the contemnors accordingly. He relies upon the Judgments of this court in 2006(3)DNJ (Raj.) 1463 (**Lrs of Padma Rani (Smt.) Vs. Chandra Prakash**); 1997(1) RLR 336 (**Ram Rakh Chacha Vs. Mohd. Yusuf**) and JT 2006(4) SC 540 (**Rama Narang Vs. Ramesh Narang & Anr.**).

5. As against this, learned counsel for the respondent-contemnors of course submitting an unconditional apology, has also tried to explain that the possession of the suit premises could not be handed over on or before stipulated date of 30.11.2006 because of dispute between the partners who were brothers and respondent-contemnor no.2 being out of city on the said date on account of some business tour. He further submitted that on 15.12.2006, the respondent no.2 gave telegram to the petitioner to take the vacant possession of the suit premises but she did not cooperate and, therefore, no wilful disobedience of the undertaking/order of this court was committed by them.

6. This was strongly refuted by the learned counsel for the petitioner, who submitted that the petitioner Landlord had to run from pillar to post after waiting for long period of two and half years taken by the appellant-tenant from this court on 21.5.2004 in handing-over the vacant possession to the Landlord on or before 30.11.2006. They had not only to file the present contempt petition but also take steps for execution of the decree after the said stipulated date and had to incur lot of expenditure in that and even effecting service of the notice of contempt petition on contemnor no.2 became a difficult job and, therefore, bailable warrant had to be issued for ensuring presence of respondent no.2 in this court. He urged that there was no so-called inter-se dispute between the parties, and it was a camouflage and false plea and the submission that the partner was out of city on the stipulated date add insults to injury as they have taken the deadline as stated in the undertaking to be an imaginary thing or that they could go scot free without complying that solemn undertaking.

7. Having heard learned counsel at length, this court is of the opinion that tendency on the part of the tenants to flout and not to comply meticulously and religiously the deadline given in such undertakings filed

before the High Court and getting their meritless appeals disposed of on such undertakings and seeking large period of time for eviction of the suit premises, cannot be encouraged. Filing of contempt petition and getting the decree executed after expiry of such periods of undertaking is quite a painful process for the Landlords and such defences put-forth in contempt jurisdiction of this court hardly deserves any sympathy for the tenants who have lost not only before the trial court but in a way before this court also and the period for eviction is granted to them only to see that the good sense and peace prevails and such tenants abide by such undertaking in its true letter and spirit. But this does not appear to have happened in the present case at all.

8. In view of this, this court holds that the present respondent-contemnors are guilty of having committed contempt of this court by a deliberate and wilful disregard of the undertaking given by them before this court and the story put forth by them about the inter-se dispute between the parties is unbelievable and deserves to be rejected out of hand.

9. This court, therefore, imposes a fine in the form of compensation of Rs.40,000/- to be paid by both the respondent-contemnors in equal part within a period of fifteen days from today to the petitioners. If such fine

is not paid by both the respondents, they shall have to undergo simple imprisonment for a period of fifteen days. If however the said amount of compensation/fine is paid within the said period of fifteen days from today and receipt to this effect is produced in this court on the record of this contempt petition, the respondent-contemnors may not be taken into custody.

10. The contempt petition is accordingly disposed of.

(Dr.VINEET KOTHARI),J.

Srawat/-